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SEC

SERVICE DATE – MARCH 8, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34698

BAY COLONY RAILROAD CORPORATION–
PETITION FOR DECLARATORY ORDER

Decided: March 7, 2006

On April 13, 2005, the Massachusetts Bay Transportation Authority (MBTA) filed a Notice of Termination of Operating Authority of the Bay Colony Railroad Corporation (Bay Colony). Bay Colony has been operating the 3.4-mile Millis Industrial Track between Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4) in Norfolk County, MA, under a modified certificate of public convenience and necessity, issued in Finance Docket No. 29963, Bay Colony Railroad Corporation–Modified Rail Certificate on September 24, 1987, pursuant to 49 CFR 1150.23. Bay Colony has been operating the line under a lease and operating agreement with MBTA, the owner of the line.

On May 2, 2005, Bay Colony filed a petition in Finance Docket No. 29963 to dismiss MBTA's notice. Bay Colony concurrently filed a petition for declaratory order in STB Finance Docket No. 34698, asking the Board to determine that: (1) MBTA's notice is invalid and ineffective to terminate its authority to operate the line; (2) Bay Colony has a regular certificate of public convenience and necessity, not a modified certificate, to operate the line; (3) MBTA can terminate Bay Colony's operating rights only by an adverse abandonment proceeding; and (4) Bay Colony is the successor in interest to, and the current holder of, an easement affording Bay Colony the right to provide freight service on the line.

A decision served on May 25, 2005, granted MBTA an extension until May 31, 2005, to file its responses to Bay Colony's petition to dismiss. Decisions served on June 1, July 11, September 7, and November 4, 2005, granted requests by the parties to hold the proceedings in abeyance to enable them to explore settlement of the issues that were raised in Bay Colony's petition.

A decision served January 5, 2006, noted that MBTA and Bay Colony had executed an assignment of easement rights with respect to freight service on the Millis Industrial Track and granted MBTA's request to dismiss with prejudice its notice of termination of Bay Colony's operating authority filed in Finance Docket No. 29963. The January 6, 2006 decision also noted that the parties were continuing to negotiate a trackage rights agreement governing Bay Colony's operations over the Millis Industrial Track and granted the parties' request to continue to hold

STB Finance Docket No. 34698 in abeyance. The parties were to report on the status of their negotiations by March 6, 2006.

On March 6, 2006, MBTA and Bay Colony reported that they are continuing to negotiate a trackage rights agreement. They indicate that MBTA has recently responded to Bay Colony's comments on a draft trackage rights agreement and that, at present, there remain only a few points to be resolved. They expect that their negotiations will conclude within 60 days and request that the Board continue to hold the petition for declaratory order in abeyance.

Good cause exists for granting the parties' request to continue to hold the petition for declaratory order in STB Finance Docket No. 34698 in abeyance. The parties are directed to report on the status of their negotiations by May 5, 2006.

It is ordered:

1. MBTA and Bay Colony's request to continue to hold STB Finance Docket No. 34698 in abeyance is granted. The parties are directed to report on the status of their negotiations by May 5, 2006.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary